No. 90-1647

Supreme Court, U.S.
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In The

Supreme Court of the United States

October Term, 1990

IN RE: STATE OF LOUISIANA *EX REL.* WILLIAM J. GUSTE, JR., ATTORNEY GENERAL, AND WILLIAM J. GUSTE, JR., IN HIS OFFICIAL CAPACITY AS ATTORNEY GENERAL OF LOUISIANA,

Petitioner

Petition For Writ Of Mandamus To The United States Court Of Appeals For The Fifth Circuit And/Or The United States District Court For The Eastern District Of Louisiana

SUPPLEMENT TO PETITION FOR MANDAMUS

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Pursuant to the Court's Rule 15.7, the State of Louisiana *ex rel.* William J. Guste, Jr., Attorney General, and William J. Guste, Jr., in his official capacity as Attorney General of Louisiana, hereby supplement their petition for mandamus by calling attention to an intervening decision of this Court not available at the time of filing of the petition.

On May 20, 1991, this Court decided *Primate Protection League v. Tulane Ed. Fund*, ___ U.S. ___, 1991 WL 79118 (U.S.), a case which Your Honors held was unlawfully removed from a Louisiana state court to federal court by the NIH. The state court petition, which sought to protect certain primates, relied exclusively on Louisiana state law. This Court held that NIH lacked statutory authority to remove petitioners' suit to federal court. In the course of the Court's opinion (per Marshall, J.), it is said that, "Petitioners' injury is clear, for they have lost the right to sue in Louisiana court – the forum of their choice." 1991 WL 79118, *4 (U.S.). And the Court repeated the fundamental rule of Section 1447(c) that, "[i]f at any time before final judgment it appears that the district court lacks subject matter jurisdiction [over a case removed from state court], the case shall be remanded." *Id.* at *9. And more: "Since the district court had no original jurisdiction over this case . . . , a finding that removal was improper deprives that court of subject matter jurisdiction and obliges a remand under the terms of § 1447(c)." *Id.* (cross reference omitted).

Your Honors concluded:

> "The statute declares that, where subject matter jurisdiction is lacking, the removed case '*shall be remanded.*' 28 U.S.C. § 1447(c) (emphasis added). We therefore reverse the decision of the Court of Appeals and remand the case to the District Court with instructions that the case be remanded to the

> Civil District Court for the Parish of Orleans, Louisiana."

Id. at *10.

All of this black-letter, of course, likewise compels a remand of *Guste v. Roemer* to the Civil District Court for the Parish of Orleans, which is the precise relief prayed for in our mandamus petition, p. 30.

Respectfully submitted,

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